

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WILLIAM K. DUFFY, KENNETH HUBER,  
PHILLIP CAPOBIANCO, JOHN DUFFY,  
PAUL O'BRIEN, MARC HERBST, JAMES  
HANEY, JR., JAMES PRATT III, SCOTT  
ADRIAN and ROBERT AHEARN, as Trustees  
of Local 138, 138A & 138B,  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, WELFARE FUND, LEGAL FUND,  
APPRENTICESHIP TRAINING FUND, and  
ANNUITY FUND, MICHAEL FANNING as CEO  
of the CENTRAL PENSION FUND,

Plaintiffs,

-against-

ORDER ADOPTING REPORT &  
RECOMMENDATION  
07-CV-962(JS)(AKT)

MODERN CONCRETE CORP.,

Defendant.

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APPEARANCES:

For Plaintiff: Anthony Lumia, Esq.  
Archer, Byington, Glennon & Levine, LLP  
425 Broadhollow Road  
Suite 405  
Melville, NY 11747

For Defendant: No Appearance

SEYBERT, District Judge:

Upon review of the Report and Recommendation ("Report")  
of Magistrate Judge A. Kathleen Tomlinson, issued March 10, 2008,  
to which no party has objected, the Court hereby ADOPTS the Report  
in its entirety.

Pursuant to Rule 72 of the Federal Rule of Civil  
Procedure, any objections to the Report were to be filed with the  
Clerk of the Court within ten days of service of the Report. The  
time for filing objections has expired and no Party has objected.

Accordingly, all objections are hereby deemed to have been waived.

The Court ADOPTS the Report in its entirety and ORDERS that default judgment be entered against Defendant in the amount of \$52,202.81 for unpaid fringe benefits, \$3,371.43 in interest on the unpaid fringe benefits, \$10,440.56 in liquidated damages, and \$7,425.00 for attorneys' fees and costs, for a total of \$73,439.80. Further, within thirty (30) days after receiving notice of entry of default, Defendant must permit Plaintiffs to audit Defendant's books and records, and to cooperate in such audit, as to Defendant's payments of fringe benefit contributions pursuant to the terms of the parties' Collective Bargaining Agreement.

SO ORDERED

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York  
March 25, 2008